

## Chapter 39

### Vietnam

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## I. MEDIA LAW

### A. SOURCES

#### § 39:1 Basic principles

The Vietnamese Constitution<sup>1</sup> and the Law on Media<sup>2</sup> provide general principles for the administration of the media by the Government of the Socialist Republic of Vietnam (the State). The State is mandated to create favorable conditions for the media to develop and for citizens to exercise their rights in relation to freedom of the media and freedom of speech. The law provides that the media and journalists shall be protected by the State. No organization or individual is permitted to limit or obstruct the operation of the media or journalists, and the media shall not be subject to censorship prior to printing or broadcasting.<sup>3</sup>

Statutory law emphasizes that the media must operate within the legal framework. Abuse of the right to freedom of the media or freedom of speech through the media is not permitted, and such acts may be construed as violations of the interests of the State, collectives, or citizens.<sup>4</sup>

#### § 39:2 Constitutional sources

The Constitution declares that the State shall develop and encourage the development of activities in the field of information, press, radio, television, cinema, publishing, libraries, and other means of mass communication. This proposition is limited by the prohibition of any activity that is detrimental to national interests and undermines the fine

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#### [Section 39:1]

<sup>1</sup>Vietnamese Constitution, dated April 15, 1992, amended on December 25, 2001 (“Constitution”).

<sup>2</sup>Law on Media No. 29/LCT-HDNN8 passed by the National Assembly on 28 December 1989, as amended on 12 June 1999 (“Law on Media”).

<sup>3</sup>Law on Media, Article 2. See also Law on Publishing, Article 5.2.

<sup>4</sup>Law on Media, Article 2. See also Law on Publishing, Article 5.3.

personality, morality, and way of life of the Vietnamese people.<sup>1</sup>

### § 39:3 Codified sources

The Law on Media governs all activities in the field, including: print media (newspapers, magazines, news bulletins from news agencies); audio media (radio programs); visual media (television programs, audio-visual programs made by various technical means); electronic media; and the computer information network (Internet), in Vietnamese, the languages of minority ethnic groups of Vietnam, and foreign languages.<sup>1</sup>

In addition to this consolidated law, the Law on Publishing<sup>2</sup> and legal normative documents related to the Internet govern media activities.

### § 39:4 Case law sources

Vietnam is a civil law country and, as such, customary law, precedent, court decisions, and opinion juris are not sources of law. Judicial decisions are not considered to have precedential effects for future decisions. In principle, similar but unrelated decisions of the Supreme Court will not be binding on lower court decisions; however, lower courts may refer to decisions of a Supreme Court judge. Judgments are not broadly published in Vietnam, and approaching case law is not easy. The Supreme Court grants publication of certain decisions of the Justice Council of the Supreme Court.

## B. REGULATORY FRAMEWORK

### § 39:5 For publishing industry

The publishing industry is mainly governed by the Law on Publishing, which regulates the organization and operation of publishing activities as well as the rights and obligations of public and private organizations and individuals partici-

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#### [Section 39:2]

<sup>1</sup>Constitution, Article 33.

#### [Section 39:3]

<sup>1</sup>Law on Media, Article 3.

<sup>2</sup>Law on Publishing, No. QH11 19/2012/QH13 passed by the National Assembly on November 20, 2012 (“Law on Publishing”).

pating in publishing activities.<sup>1</sup> Publishing activities include publishing, printing and distribution of publications, including distribution via the Internet.<sup>2</sup> The Law on Publishing (and Intellectual Property Law)<sup>3</sup> provides that the State shall ensure protection of copyright.<sup>4</sup>

The Ministry of Information and Communications (MIC) oversees the uniform administration of public and private publishing activities throughout the country<sup>5</sup> through the offices of local People's Committees in provinces and cities. The People's Committees exercise the administration of publishing activities, including licensing for printed publications within their respective localities in accordance with the authority delegated by the State.<sup>6</sup> A foreign publishing house may apply for a license to establish a representative office to introduce its products and to expedite transactions related to publications.<sup>7</sup>

Other matters related to publishing activities may be governed by the Law on Media, Intellectual Property Law and its implementing documents, the Civil Code,<sup>8</sup> the Penal Code,<sup>9</sup> as well as the related international commitments of Vietnam, such as the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention)<sup>10</sup> and the

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**[Section 39:5]**

<sup>1</sup>Law on Publishing, Article 1.

<sup>2</sup>Law on Publishing Article 1.

<sup>3</sup>Law on Intellectual Property No. 50/2005/QH11 passed by the National Assembly on 29 November 2005, as amended on 19 June 2009 ("Intellectual Property Law").

<sup>4</sup>Law on Publishing, Articles 5.1 and 21. See also Intellectual Property Law.

<sup>5</sup>Law on Publishing, Article 6.2.

<sup>6</sup>Law on Publishing, Article 6.2.

<sup>7</sup>Law on Publishing, Article 8.

<sup>8</sup>Civil Code, No. 33/2005/QH11, passed by the National Assembly on June 14, 2005 ("Civil Code").

<sup>9</sup>Penal Code, No. 15/1999/QH11, passed by the National Assembly on 21 December 1999 ("Penal Code").

<sup>10</sup>Berne Convention for the Protection of Literary and Artistic Works, September 9, 1886, as revised at Paris on July 24, 1971, and amended in 1979, S. Treaty Doc. No. 99-27 (1986).

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).<sup>11</sup>

### § 39:6 For broadcasting industry

Activities in the broadcasting industry, which by statutory definition include audio and visual media, fall under the governance of the Law on Media, the Law on Cinematography,<sup>1</sup> Intellectual Property Law<sup>2</sup> and its implementing documents, and Article 271 of the Penal Code, relating to the publication and distributions of books, newspapers, audio discs and tapes.<sup>3</sup>

The granting of a license to broadcast is based on conditions stipulated in the Law on Media.<sup>4</sup> The technical broadcasting units of public and private radio and television stations are responsible for ensuring that broadcasts reach permitted areas. Radio and television stations that produce audio and visual current-affairs programs are not permitted to broadcast media items which have been prohibited or confiscated.<sup>5</sup>

### § 39:7 For on-line services

Electronic media is a component of “the press” and is therefore governed by the Law on Media and related regulations.<sup>1</sup> Related documents that directly govern on-line content include: Decree No. 72/2013/ND-CP of the Government dated 15 July, 2013, on the management, provision, and use of Internet services and online information; Circular No. 07/2008/TT-BTTTT regulating the provision of information on personal electronic web pages (blogs) issued in

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<sup>11</sup>Agreement on Trade-Related Aspects of Intellectual Property Rights, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299; 33 I.L.M. 1197 (1994).

#### [Section 39:6]

<sup>1</sup>Law on Cinematography No. 62/2006/QH11 passed by the National Assembly on 29 June 2006 as amended on 18 June 2009 (“Law on Cinematography”).

<sup>2</sup>Intellectual Property Law.

<sup>3</sup>Penal Code, Article 271.

<sup>4</sup>Law on Media, Articles 18, 19.

<sup>5</sup>Law on Media, Article 22.

#### [Section 39:7]

<sup>1</sup>Law on Media.

December 2008; and Decision No. 28/2002/QĐ-BVHTT—as amended by the Circular No. 21/2011/TT-BTTTT promulgating regulations on publication of news bulletins, documents and leaflets, press releases, and distribution of news items on electronic screens<sup>2</sup> by foreign agencies and organizations. Individuals and organizations providing on-line services or operating on-line activities must also obey the Law on Cinematography.<sup>3</sup>

### § 39:8 Regulators and their core competencies

The Ministry of Information and Communications (MIC) is the policy-making and regulatory body in the fields of press; publishing; posts; telecommunications and the Internet; radio frequency; information technology, electronics; broadcasting and national information infrastructure; and the management of related public services on behalf of the State. The ministry also regulates standards, technical standards, charges, and tariffs in related services. The MIC grants and revokes operating licenses in the fields of broadcast and television.

The MIC established the Directorate of Broadcasting and Electronic Information, which directly manages activities related to the broadcasting industry and the provision and use of electronic information. The MIC also established the Directorate of the Press and the Directorate of Publishing.

### § 39:9 Public sector in the media industry

In Vietnam, the State controls the field of audio and visual media, from radio channels, public television programs, and cable television to all other forms of audio-visual media. Vietnam Television, or VTV, is called the National Television and is directly under the management of the State. Vietnam Cable Television, known as VCTV, is a component of Vietnam Television.

Another nationwide broadcasting agency is Vietnam Multimedia Corporation, or VTC, which is a State-owned company under the control of the MIC. VTC provides audio and visual programs via the Internet, services relating to digital television, and satellite digital television.—Provincial and municipal broadcasting agencies are directly under the

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<sup>2</sup>This expression covers computer screens; however, the Decision does not specifically refer to computer networks and the Internet.

<sup>3</sup>Law on Cinematography.



control of local governments. On-line services provide the greatest freedom for individuals and organizations in both the private sector and civil society.

**§ 39:10 Split of legislative/regulatory authority between the federal government and individual states**

The legal and political system in Vietnam is centralized with one state and does not follow a federal system.

**C. DEFAMATION**

**§ 39:11 Main sources of law**

The law of defamation is mainly based on the Civil Code sections related to personal rights. The Civil Code states that the honor, dignity, and reputation of an individual shall be respected and protected by law.<sup>1</sup> Other sources include Penal Code articles regarding slander and humiliating other persons,<sup>2</sup> as well as the Law on Complaints and the Law on Denunciations, promulgated to facilitate complaints and denunciations related to the activities of public agencies, thus contributing to democracy, the enhancement of the socialist legal system, the protection of State interests as well as the legitimate rights and interests of citizens, agencies, and organizations.<sup>3</sup> In certain circumstances, provisions of the Law on Competition<sup>4</sup> and Decree 04-2005-ND-CP of the Government, dated January 11, 2005, Implementing the Labor Code on Labor Complaints and Denunciations may apply.

**§ 39:12 Definition and significant subdivisions**

Under the Penal Code, persons who commit the crime of slander are those who trump up or spread stories knowing them to be fabricated in order to infringe upon or damage

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**[Section 39:11]**

<sup>1</sup>Civil Code, Article 37, right to protection of honor, dignity, and reputation.

<sup>2</sup>Penal Code, Articles 42, 121, 122.

<sup>3</sup>Law on Complaints No. 02/2011/QH13 passed by the National Assembly on November 11, 2011 (“Law on Complaints”); Law on Denunciations No. 03/2011/QH13 passed by the National Assembly on 11 November 2011 (“Law on Denunciations”).

<sup>4</sup>Law on Competition No. 27/2004/QH11 passed by the National Assembly on 3 December 2004 (“Law on Competition”).

the honor, legitimate rights, or interests of another person or to accuse another person of committing a crime and denouncing them before competent agencies.<sup>1</sup> Persons who commit the crime of humiliating others, “seriously infringe upon the dignity or honor of other persons.”<sup>2</sup>

### § 39:13 Main factors or elements of claim

The Civil Code simply provides that damage is caused by harm to the honor, dignity, or reputation of an individual or harm to the honor or reputation of a legal entity. The court will interpret the codified definitions and determine if defamation has been proven based on the facts of each case.<sup>1</sup>

### § 39:14 Types of relief available

Depending on the facts and circumstances of a defamation claim, relief is available pursuant to civil law,<sup>1</sup> criminal law,<sup>2</sup> the Law on Publishing,<sup>3</sup> and the Law on Media.<sup>4</sup>

The Vietnamese Civil Code provides that any person who intentionally or unintentionally harms the life, health, honor, dignity, reputation, property, or other legal rights or interests of an individual, or harms the honor, reputation, or property of a legal entity, thereby causing damage, must compensate a plaintiff for such damage.<sup>5</sup> Article 611(1) of the Civil Code provides for (a) reasonable costs for mitigating and remedying the damage and (b) loss of or reduction in actual income.

A person causing harm to the honor, dignity, or reputation of another person must also pay compensation for the mental

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#### [Section 39:12]

<sup>1</sup>Penal Code, Article 122.

<sup>2</sup>Penal Code, Article 121.

#### [Section 39:13]

<sup>1</sup>*See also* the Law on Media, Article 10(4) which states that the media is not permitted to disseminate information which is untruthful, distorted, or slanderous and harmful to the reputation of organizations or the reputation and dignity of citizens.

#### [Section 39:14]

<sup>1</sup>Civil Code, Article 611.

<sup>2</sup>Penal Code, Article 42.

<sup>3</sup>Law on Publishing, Article 9.

<sup>4</sup>Law on Media, Articles 9, 10.

<sup>5</sup>Civil Code, Articles 608–612.

suffering of the aggrieved person.<sup>6</sup> The amount of compensation for mental suffering will be agreed upon by the parties, and if the parties are not able to agree, the maximum sum will not exceed 10 months wages at the minimum monthly wage rate provided by the State.<sup>7</sup>

Furthermore, if damage is caused by harm to the life, health, honor, dignity, or reputation of a person, or a decrease or loss of authors' credit (prestige) or confidence, the perpetrator must cease the harmful acts, make a public apology and retraction, and pay a sum of money to compensate for the spiritual damage caused.<sup>8</sup>

Articles 42 and 122(1) of the Penal Code set forth that those who are found guilty of slander are subject to a warning, noncustodial reform for up to two years, or a prison term of between three months and two years. The sentence shall be between one and seven years imprisonment if the person commits the crime (i) in an organized manner; (ii) abusing their position and power; (iii) against more than one person; (iv) against their own grandfathers, grandmothers, fathers, mothers or persons who teach, nurture, look after, educate and/or medically treat them; (v) against persons who are performing their official duties; or (vi) by slandering other persons regarding serious crimes.<sup>9</sup> Furthermore, offenders may be subject to a fine of between one million and ten million Vietnamese dong, as well as a ban from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.<sup>10</sup>

The Law on Publishing regulates complaints and denunciations regarding publishing activities. Individuals have the right to lodge a complaint about any conduct contrary to law in publishing activities in accordance with the provisions of law on complaints and denunciations.<sup>11</sup> When appropriate, a publishing house, body, or organization may be required to compensate for loss and damage. Also, a complainant may request civil proceedings or request the competent State body to institute a prosecution when a publication contains

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<sup>6</sup>Civil Code, Article 611.2.

<sup>7</sup>Civil Code, Article 611.2.

<sup>8</sup>Civil Code, Articles 307 and 604.

<sup>9</sup>Penal Code, Articles 42 and 122.2.

<sup>10</sup>Penal Code, Articles 42 and 122.3.

<sup>11</sup>Law on Publishing, Article 9.

errors, slanders, or offends honor and dignity, causing loss and/or damage to legal rights and interests.<sup>12</sup>

### § 39:15 Defenses available

Defenses are not specifically mentioned in Vietnam's law of defamation. Defendants facing a defamation complaint may explain any extenuating or mitigating circumstances.

### § 39:16 Time period for asserting claim

The time period for initiating a legal action claiming compensation for damage is two years. Time is calculated from the date on which the legal rights or interests of an individual, legal entity, or other subject were infringed.<sup>1</sup>

## D. INVASION OF PRIVACY

### § 39:17 Main sources of law

The right to privacy is set forth in Article 38 of the Vietnamese Civil Code.<sup>1</sup> The article clearly states that the right to privacy of an individual and the safety and confidentiality of the mail, telephone, electronic mail, and other forms of electronic information shall be respected and protected by law. Control of personal mail, telephone, electronic mail, and other forms of electronic information may only be conducted by law and pursuant to a decision issued by an authorized State body.<sup>2</sup> Consent is required for the collection and publication of information and data about the private life of an individual.<sup>3</sup>

Article 125 of the Penal Code stipulates that those who appropriate letters, telegrams, telex, facsimile, or other documents transmitted by telecommunication or computer or commit illegal acts infringing upon the secrecy or safety of

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<sup>12</sup>Law on Publishing, Articles 11.1 and 11.2.

#### [Section 39:16]

<sup>1</sup>Civil Code, Article 607.

#### [Section 39:17]

<sup>1</sup>Civil Code, Article 38.1.

<sup>2</sup>Civil Code, Article 38.4. *See also* Law on Information Technology No. 67-2006-QH11 passed by the National Assembly on 29 June 2006 ("Law on Information Technology"), Article 21; Decree No. 90/2008/ND-CP of the Government dated 13 August 2008 on anti-spamming as amended by Decree No. 77/2012/ND-CP on 5 October 2012.

<sup>3</sup>Civil Code, Article 38.3.

letters, telephone conversations, or telegraphs and who have been disciplined or administratively sanctioned for such acts but continue to commit violations shall be subject to sanctions.<sup>4</sup>

The Law on Information Technology states that an authorized State body is responsible to monitor and supervise digital information and to investigate breaches of the law arising from the process of transmitting or storing digital information.

Organizations and individuals collecting, processing, and using the personal information of another person in a network environment must obtain consent from such person, unless otherwise stipulated by law. Organizations and individuals collecting, processing, and using personal information of another person shall have the responsibility to notify persons as to the form, scope, place and purpose of the collection, processing, and use of his or her personal information; to use the collected personal information for proper purposes and to store such information only for a certain period as stipulated by law or as agreed upon by the parties; to take necessary managerial or technical measures to ensure that the personal information shall not be lost, stolen, disclosed, modified, or destroyed; to immediately take necessary measures upon receipt of a request for re-examination, correction, or cancellation; and not to supply or use relevant personal information until such information is corrected.<sup>5</sup> A monetary fine of up to VND 70 million, (approximately USD 3,300) may be imposed on the illegal act of storage, access, disclosure or use of “related” information of the services users.<sup>6</sup>

Organizations and individuals are entitled to collect, process, and use the personal information of another person without the consent of the latter in a case where such personal information is used for the following purposes: signing, modifying, or performing contracts for use of information, products, or services in a network environment; pricing or calculating charges for use of information, products, or

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<sup>4</sup>Penal Code, Article 125.1.

<sup>5</sup>Law on Information Technology, Article 21.2.

<sup>6</sup>Law on E-transactions No. 51/2005/QH11 passed by the National Assembly on November 29, 2005 (“Law on E-transactions”), Article 63.

services in a network environment; and performing other obligations in accordance with the law.<sup>7</sup>

An individual is entitled to request any organization or individual storing his or her personal information in a network environment to check, correct, or cancel such information.

Organizations or individuals are not permitted to supply the personal information of another person to any third party unless otherwise stipulated by law or agreed by such person. Individuals are entitled to claim compensation for loss caused by a breach during the supply of personal information.<sup>8</sup>

### § 39:18 Definition

Privacy law is defined in the Civil Code, Penal Code, the Law on Information Technology, and the Law on E-transactions. The court interprets and applies the law according to specific cases and circumstances.<sup>1</sup>

### § 39:19 Main factors or elements of claim

In a claim for invasion of privacy, the elements of tort law or criminal law are applied where appropriate.

### § 39:20 Types of relief available

The relief available for claims of invasion of privacy is not clear. However, sanctions for an invasion of personal privacy or safety of letters, telephone, and/or telegraph clearly include a warning, a fine of between three million and 20 million Vietnamese dong, or noncustodial reform for up to one year.<sup>1</sup> Offenders are subject to noncustodial reform for one to two years or a prison term of between three months and two years if they commit the crime in one of the following circumstances:

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<sup>7</sup>Law on Information Technology, Article 21.3.

<sup>8</sup>Law on Information Technology, Article 22.

#### [Section 39:18]

<sup>1</sup>Penal Code, Article 125.1.

#### [Section 39:20]

<sup>1</sup>Decree 75/2010/ND-CP on Administrative Sanctions for Violations in Cultural Activities, Article 7 (VND10-15 million); Decree 02/2011/ND-CP on Administrative Sanctions for Violations in Media & Publishing Activities, Articles 7 & 18 (VND3-20 million); Decree 47/2009/ND-CP on Administrative Sanctions for Violations in the Area of Copyright and Related Rights, Article 8 (VND 5-10 million).

- (a) in an organized manner;
- (b) abusing their positions and/or powers;
- (c) committing the crime more than once;
- (d) causing serious consequences; or
- (e) recidivism.

Offenders may also be subject to a fine of between two million and twenty million Vietnamese dong and/or to a ban from holding certain posts for one to five years.<sup>2</sup>

#### § 39:21 Defenses available

Defenses for invasion of privacy are not clearly indicated in Vietnam law.

#### § 39:22 Time period for asserting claim

If there is any damage caused by an invasion of privacy, the limitation period for asserting a claim related to such violation is two years from the date on which the right to privacy of an individual, legal entity, or other subject was infringed.<sup>1</sup>

### E. RIGHT OF PUBLICITY

#### § 39:23 Main sources of law

Article 38 of the Civil Code protects persons against illegal publication of their private information. “The collection and publication of information and data about the private life of an individual must have the consent of that person.”<sup>1</sup>

#### § 39:24 Protection of right of publicity after death

Regarding the protection of right of publicity of a person after death, the Civil Code states that if a person has died, lost the capacity for civil acts, or is not yet 15 years of age, the consent of a parent, spouse, adult child, or representative of that person must be obtained, except where the col-

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<sup>2</sup>Penal Code, Article 125.

#### [Section 39:22]

<sup>1</sup>Civil Procedure Code No. 24-2004-QH11 passed by the National Assembly on 15 June 2004, as amended on 29 March 2011 (“Civil Procedure Code”), Article 159.

#### [Section 39:23]

<sup>1</sup>Civil Code, Article 38.

lection and publication of information and data is required pursuant to a decision of an authorized State body.<sup>1</sup>

### § 39:25 Main factors or elements of claim

The elements of a violation of the right to publicity are not specifically mentioned in Vietnam's laws. It can be understood that the court will interpret specific cases and circumstances.

### § 39:26 Types of relief available

There is no concrete provision regarding the relief available for a plaintiff claiming violation of the right to publicity.

### § 39:27 Defenses available

Defenses for violating the right to publicity are not clearly mentioned in Vietnam's laws.

### § 39:28 Time period for asserting claim

If there is any damage caused by the violation of the right to publicity, the time period for asserting a claim of such violation is two years from the date on which the right to publicity of an individual, legal entity, or other subject was infringed.<sup>1</sup>

## II. ADVERTISING LAW

### A. SOURCES OF ADVERTISING LAW

#### § 39:29 Basic principles

Advertising activities are governed mainly by the Law on Advertising.<sup>1</sup> Pursuant to Article 3 of the Law on Advertising, the State must protect the legal rights and interest of advertisers and create favorable conditions for persons conducting advertising services. Information included in

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[Section 39:24]

<sup>1</sup>Civil Code, Article 38.2.

[Section 39:28]

<sup>1</sup>Civil Code, Article 607.

[Section 39:29]

<sup>1</sup>Law on Advertising No. 16-2012-QH13 passed by the National Assembly on 21 June 2012 ("Law on Advertising"), Article 1.1.



advertisements for goods, services, and business activities must be true, accurate, and clear; must not be misleading or confusing; or cause loss or damages to producers, business persons or consumers.<sup>2</sup>

#### § 39:30 Constitutional sources

There are no provisions in the Constitution specifically governing advertising activities; however, the Constitution and the Law on Advertising stipulate that the State strictly punishes all production or business activities that harm the legitimate interests of the State, collectives, and citizens.<sup>1</sup> Furthermore, the State has general policies to protect the interests of producers and consumers.

#### § 39:31 Codified sources

The Law on Advertising came into effect on January 1, 2013, and is the main legislation governing activities of advertising in Vietnam. Advertisement is also regulated by various pieces of legislation, such as the Commercial Law and the Law on Competition.<sup>1</sup> Only Vietnamese business entities, branches of foreign business entities, and foreign invested enterprises in Vietnam may directly, or through advertising business enterprises, advertise their products, goods, or services. Foreign business entities that do not have commercial representatives in Vietnam who wish to advertise their products or services must hire Vietnamese business entities to conduct advertising services.<sup>2</sup>

The Law on Advertising regulates the advertisement of “conditional products,” such as alcohol, medical drugs, cosmetics, domestic and medical chemicals, pesticides and antiseptics, milk and dietary products for toddlers, food and food additives, medical examination and treatment services,

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<sup>2</sup>Law on Advertising, Article 19.

#### [Section 39:30]

<sup>1</sup>Constitution Article 28; Law on Advertising, Article 11.

#### [Section 39:31]

<sup>1</sup>Commercial Law, No. 36/2005/QH11 passed by the National Assembly on June 14, 2005 (“Commercial Law”), Articles 102-106; Law on Competition, Articles 39, 45.

<sup>2</sup>Commercial Law, Article 103. Law on Advertising, Article 39.

etc., which must have specific certificates issued by the competent authorities.<sup>3</sup>

Advertisements on spoken, visual or electronic media, printed media and advertisements in publications, films, photos, videos, picture discs, sound video, and sound discs are also governed by the Law on Advertising.<sup>4</sup>

With respect to advertising cosmetics, Circular 06/2011/TT-BYT Promulgating Regulations on Management of Cosmetics regulates the subject matter.<sup>5</sup>

Advertising drugs is regulated mainly by Circular 13/2009/TT-BYT.<sup>6</sup> It prohibits certain advertising activities for medicine such as providing material benefits for doctors and medicine users in order to influence them to prescribe or use a medicine. Abusing the name, symbol, or image of pharmaceutical organizations, doctors, or health officers in order to advertise medicine is also prohibited.

The Ministry of Culture, Sport and Information issued Circular 78/2008/TT-BVHTT,<sup>7</sup> amending some articles of Circular 19/2005/TT-BVHTT and Resolution 12/2005/NQ-CP on the prohibition of advertisements for tobacco. Vietnamese law strictly prohibits tobacco advertisement in all forms, including using the label, symbols, and appellation of tobacco products with products and services not related to tobacco.<sup>8</sup>

Advertisements in outdoor places are regulated by the Law on Advertising. Organizations or individuals placing an advertisement outdoors must protect urban beauty, landscape, and environment in compliance with the laws on advertising, rural and urban planning, traffic order and safety, and the safety of society.<sup>9</sup>

Advertising through e-mail and text messages is regulated by Decree 90/2008/ND-CP of the Government on anti-

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<sup>3</sup>Law on Advertising, Article 20.

<sup>4</sup>Law on Advertising, Articles 21–26.

<sup>5</sup>Circular 06/2011/TT-BYT of the Ministry of Health Promulgating Regulation on Management of Cosmetics dated November 25, 2011, Chapter VI.

<sup>6</sup>Circular 13-2009-TT-BYT of the Ministry of Health on Information and Advertisement of Medicines, dated 1 September 1, 2009 as amended by Circular 45/2011/-TT-BYT and Decision 3814/QD-BYT.

<sup>7</sup>Circular 78/2008/TT-BVHTT, dated May 12, 2008, amended August 29, 2008.

<sup>8</sup>Law on Advertising, Article 7.

<sup>9</sup>Law on Advertising, Article 37.

spamming dated August 13, 2008 (“Decree 90”), as amended by Decree 77/2012/ND-CP of the Government dated 5 October 2012 (“Decree 77”).<sup>10</sup> Decree 90 and Decree 77 also impose the following general restrictions on email and text message advertising: (i) the advertising email and advertising text message may only be sent after obtaining a clear prior consent of the recipient; (ii) the advertiser must immediately stop sending email and text message advertisements when receiving the refusal from the recipient; (iii) it is prohibited to send more than one advertising email with the same content to an email address within 24 hours, unless otherwise agreed by the receiver; and (iv) it is prohibited to send more than one advertising message with the same contents to a telephone number within a 24-hour period, and such message may only be sent between the hours of 7:00 a.m. to 10:00 p.m., unless otherwise agreed by the recipient.<sup>11</sup>

### § 39:32 Case law sources

Advertising cases are handled by State bodies rather than courts.

## B. FALSE ADVERTISING

### § 39:33 Main sources of law

False advertising is regulated by a number of Vietnamese laws, namely, the Penal Code, the Commercial Law, the Law on Advertising, the Law on Competition, the Law on Protection of Consumers’ Rights and the Law on Quality of Goods and Products.<sup>1</sup> Any individual or organization providing false advertising, depending on the nature and seriousness of the offense, shall be charged with an administrative liability or criminal penalty.<sup>2</sup> Additionally, under the Law on Consumer Protection, consumers have the right to request a refund or compensation for loss and damage when goods and services do not satisfy the standards, quality, quantity, and price as

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<sup>10</sup>Decree 90 Articles 7–16.

<sup>11</sup>Decree 90, Articles 7, 12 and 16.

#### [Section 39:33]

<sup>1</sup>Law on the Protection of Consumers’ Rights No. 59/2010/QH12 passed by the National Assembly on November 17, 2012 (“Law on Protection of Consumers’ Rights”); Law on Quality of Goods and Products No. 05/2007/QH12, passed by the National Assembly on 21 November, 2007 (“Law on Quality of Goods and Products”).

<sup>2</sup>Law on Advertising, Article 11.

offered by the suppliers, and may complain, denounce, and institute proceedings in respect of any false information or advertising.<sup>3</sup>

#### § 39:34 Definition and significant subdivisions

The Law on Advertising prohibits advertising with contents which are untrue or misleading about the business capacity or ability to provide products, goods, or services of an organization or individual conducting business in products, goods or services; or about the quantity, quality, price, usage, design, package, trademark, origin, type, method of serving or warranty period of products, goods or services which have been registered or declared.<sup>1</sup> The Commercial Law prohibits false advertisement of goods and services with respect to any of the following: quantity, quality, price, usage, design, origin of goods, type, packaging, method of service, and warranty period.<sup>2</sup> The Law on Competition defines false advertising as providing false or misleading information to consumers relating to one of the following:

- (i) price, quantity, quality, usage, design, type, packaging, date of manufacture, use expiry, origin of goods, manufacturer, place of manufacture, processor, or place of processing;
- (ii) manner of use, method of services, warranty period; or
- (iii) other false or misleading information.<sup>3</sup>

#### § 39:35 Main factors or elements of claim

Regarding compensation for damages in cases of false advertising, the Commercial Law, the Law on Advertising, the Law on Quality of Goods and Products, and the Law on Protection of Consumers' Rights have provisions on claims, but, in general, they refer to principles of the Vietnam Civil Code.<sup>1</sup> Under the Civil Code, an injured person may claim compensation based on the following elements:

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<sup>3</sup>Law on Protection of Consumers' Rights, Article 8.

#### [Section 39:34]

<sup>1</sup>Law on Advertising, Article 8.9.

<sup>2</sup>Commercial Law, Article 109.

<sup>3</sup>Law on Competition, Article 45.

#### [Section 39:35]

<sup>1</sup>Civil Code.

- (i) there has been an illegal act committed (such as providing false advertisements);
- (ii) there has been damage caused and the damage caused must be the result of the illegal acts and vice versa (an injured person must prove the damage was caused by false advertising, which may include material damage and mental suffering); and
- (iii) the party causing damage was at fault.

**§ 39:36 Examples of claims found false or misleading and claims found not false or misleading**

There have been few cases related to false advertising in Vietnam's administrative authorities. Furthermore, Vietnam applies a civil law system where judgments are not binding on future courts and are rarely published. Thus, the facts of a case and full text of a court's decision are not easily obtained. Certain cases decided by competent authorities have been published on the web-site of such authorities.

Several cases handled by the Vietnam Competition Administration Department (VCAD) may serve as examples.

In August 2011, a television shopping company advertised its cosmetic products as having magical effects that would have tremendous beautifying effects on consumers within a short time. These cosmetic products had completed the necessary quality standards process with the Ministry of Health of Vietnam, but when they were advertised on television, the product functions and uses were magnified as compared with the approved product standards. When questioned by the VCAD about these claims, the company could not prove the claimed results. The company was fined VND 45 million (approximately USD 2,130) for violation of Article 45 of the Law on Competition. Additionally, the company revised the advertisement content to comply with Vietnamese laws.<sup>1</sup>

In another case, a leading electronics company advertised a product with the functions that it acted "against wrinkles in clothes" or "water safe to 50%" but later failed to prove these functions. In September 2011, the company was fined

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**[Section 39:36]**

<sup>1</sup><http://baodatviet.vn/Home/kinhte/-bi-phan-vi-quang-cao-lo/201110/173138.datviet>.

VND 30 million (approximately USD 1,420) for violation of Article 45 of the Law on Competition.<sup>2</sup>

### § 39:37 Types of relief available

If it is proved that an individual or organization committed an act of false advertisement, administrative sanctions or criminal penalties may be applied. In cases where a false advertisement causes damage to an individual or organization, the latter may claim compensation for extra-contractual damage.<sup>1</sup>

Administrative sanctions include monetary fines and warnings. Providing false advertisements can result in a fine up to VND 30 million (approximately USD 1,420). Supplemental sanctions may include confiscation of products that are falsely advertised and removal of the advertisement.<sup>2</sup> With respect to an act of providing false advertisement that is aimed at unfair competition, an individual or organization may be subject to a fine of up to VND 50 million (approximately USD 2,370).<sup>3</sup> Additional sanctions and measures for remedying consequences may also be applied, including confiscation of material evidence and facilities used to commit the breach, all profits earned from such breach, and public retraction.<sup>4</sup>

Criminal penalties may be applied to an offender only when the false advertisement causes serious consequences or the offender has continued to commit an offense after being administratively sanctioned or sentenced for such offense and not yet entitled to criminal record remission. The offender may be subject to a fine of between VND 10 million (approximately USD 470) and VND 100 million (approximately USD 4,740), noncustodial reform for up to three years, or a prison term of between six months and three years. There may also be supplemental sanctions of a fine up

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<sup>2</sup><http://baodatviet.vn/Home/kinhte/-bi-phat-vi-quang-cao-lo/201110/173138.datviet>.

#### [Section 39:37]

<sup>1</sup>Law on Advertising, Article 11.2.

<sup>2</sup>Decree No. 75/2010/ND-CP on Administrative Sanctions for Violations in the Cultural Activities, Article 30.6.

<sup>3</sup>Decree No. 120/2005/ND-CP of the Government, dated September 30, 2005, on dealing with breaches in competition sector (“Decree 120”), Article 35.

<sup>4</sup>Decree 120, Articles 35 and 30.3.

to VND 50 million (approximately USD 2,370) or a ban from practicing certain occupations or doing certain jobs for one to five years.<sup>5</sup>

#### § 39:38 Defenses available

Pursuant to Decree No. 99/2011/ND-CP,<sup>1</sup> a consumer has the right to make a claim of false advertising against an advertising party.<sup>2</sup> The consumer should submit a written request to the State administrative body for consumer protection, including the information of the violating trader, details of the case, the consumer's specific request and enclosed documents and evidence. When faced with such a claim, an advertising party must prove that all contents of its advertisement are true and not misleading to consumers. If an advertising party is successful in proving that it is not at fault in creating consumer confusion, it may not be liable.<sup>3</sup> In a civil proceeding, the responsibility to prove the damage caused by the defendant belongs to the plaintiff.<sup>4</sup>

#### § 39:39 Evidence required to support advertising claims based on tests

There is no specific regulation regarding scientific tests or surveys used to substantiate claims made in advertisements. Tests and examinations may vary from case to case. In cases of advertising claims relating to the quality of goods, the Vietnam official standards (*i.e.*, TCVN) issued by the Vietnam Standard and Quality Center can be used to verify whether the advertised products reach the quality standard or not.<sup>1</sup>

#### § 39:40 Time period for asserting claim

The time limit for the authority to impose a penalty for a

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<sup>5</sup>Penal Code, Article 168.

#### [Section 39:38]

<sup>1</sup>Decree No. 99/2011/ND-CP of the Government dated 27 November 2011 detailing and guiding a number of articles of the Law on Protection of Consumers' Rights ("Decree 99").

<sup>2</sup>Decree 99, Articles 20-23.

<sup>3</sup>Decree No. 55/2008/ND-CP of the Government dated, April 24, 2008, Articles 15–18.

<sup>4</sup>Civil Procedure Code, Article 79.

#### [Section 39:39]

<sup>1</sup><http://www.tcvn.gov.vn/tochuc/infor/english/tcvnnet.htm>.

criminal offense pursuant to administrative procedures is one year from the date on which the offense was committed. If within such time limit, an offender commits a similar offense or intentionally evades or obstructs justice, the time limit will commence from the date on which the new offense was committed or the act of evasion or obstruction ceased.<sup>1</sup>

The time limit for criminal liability prosecution is five years from the date on which false advertising was carried out.<sup>2</sup> If the offender deliberately flees, and a warrant is issued, the limitation is tolled, and the time limit must be recalculated from the time when the offender is arrested.<sup>3</sup>

The time limit for initiating legal action claiming compensation for damage is two years from the date on which the legal rights or interests of an individual or organization were infringed.<sup>4</sup>

### **C. THIRD PARTY TRADEMARKS AND COPYRIGHTS IN ADVERTISING**

#### **§ 39:41 Permissibility of using another party's trademark in advertising without that party's authorization**

Vietnamese regulations strictly prohibit “advertisements violating laws and regulations on intellectual property.”<sup>1</sup>

#### **§ 39:42 Permissibility of using another party's copyrighted work in advertising without that party's authorization**

Under Vietnam's Law on Intellectual Property, a copyright holder shall have the right to communicate, or publish,

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#### **[Section 39:40]**

<sup>1</sup>Law on Handling Administrative Violations No. 15/2012/QH13 dated June 20, 2012 (“Law on Handling Administrative Violations”), Article 6.

<sup>2</sup>Penal Code, Article 23.3.

<sup>3</sup>Penal Code, Article 23.2.

<sup>4</sup>Civil Code, Article 607.

#### **[Section 39:41]**

<sup>1</sup>Law on Advertising, Article 8.13. See also Intellectual Property Law.



its works to the public by any means.<sup>1</sup> When a party attempts to use another party's copyrighted work in an advertisement, it must ask for permission from the copyright holder and must pay royalties, remuneration, or other material benefits to the copyright holder.<sup>2</sup>

### § 39:43 Time period for asserting claim of trademark infringement or copyright infringement

Under Vietnamese civil law, if any damage is caused by trademark or copyright infringement, the time period for asserting a claim of such infringement is two years from the date on which the infringement was conducted.

The time limit for criminal liability prosecution is five years from the date on which infringement was carried out.<sup>1</sup> If the offender deliberately flees, and a warrant is issued, the limitation is tolled, and the time limit must be recalculated from the time when the offender is arrested.<sup>2</sup>

Criminal penalties may be applied to an offender who, without permission of holders of copyright or related rights, commits the act of infringing upon copyrights or intellectual property rights on a commercial scale. Such offender shall be imposed a fine of between VND 50 million (approximately USD 2,370) and VND 500 million (approximately USD 23,700), or non-custodial reform for up to two years.<sup>3</sup>

## III. ENTERTAINMENT LAW

### A. SOURCES

#### § 39:44 Basic principles

The Vietnamese government tends to encourage the entertainment activities of its citizens. However, these activities must not violate the nation's legal framework or the Constitution.

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#### [Section 39:42]

<sup>1</sup>Intellectual Property Law, Articles 19.3, 20.

<sup>2</sup>Intellectual Property Law, Article 20.

#### [Section 39:43]

<sup>1</sup>Penal Code, Article 23.3.

<sup>2</sup>Penal Code, Article 23.2.

<sup>3</sup>Penal Code, Articles 170 and 171.

**§ 39:45 Constitutional sources**

The Vietnamese Constitution provides general principles on cultural and artistic activities in Article 32, which states that art and literature help nurture the noble personality and soul of the Vietnamese people. The State invests in the development of culture, literature, and art, creates favorable conditions for the people to enjoy literary and artistic works of high value, and sponsors the promotion of creative literary and artistic talents. The State also develops diverse forms of literary and artistic activities, and encourages popular literary and artistic activities.<sup>1</sup>

**§ 39:46 Codified sources**

Vietnam does not have codified law governing entertainment activities. Any case relating to a specific aspect of entertainment will be regulated by the applicable law (*e.g.*, Law on Cinematography, etc.).

**§ 39:47 Case law sources**

Vietnam is a civil law country; case law has no precedential authority.

**B. TYPES****§ 39:48 Legal matters characterized as entertainment law**

In Vietnam, cultural and informative activities can be characterized as entertainment activities, including press, publishing, cinematography, performing arts, public cultural activities and cultural services, fine arts, cultural and art exhibitions and photography.<sup>1</sup>

**IV. ART LAW****A. SOURCES****§ 39:49 Main sources of law relating to sale of artworks**

Generally, the Commercial Law governs the sale of

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**[Section 39:45]**

<sup>1</sup>Constitution, Article 32.

**[Section 39:48]**

<sup>1</sup>Decree 75/2010/ND-CP of the Government dated 12 July 12, 2010, on Administrative Sanctions for Violations in Cultural Activities.

artwork, as it is treated as any other kind of goods. The Commercial Law provides for trade fairs and exhibitions.<sup>1</sup> The moral rights attached to artistic goods are regulated by the Intellectual Property Law.

### § 39:50 Sources of law for artists' rights

Vietnam's Intellectual Property Law clearly states artists' rights related to their artworks. Artists' rights are comprised of moral rights and economic rights.

The moral rights of authors are listed in Article 19, as follows:

1. Right to give titles to their works.
2. Right to attach their real names or pseudonyms to their works, and to have their real names or pseudonyms acknowledged when their works are published or used.
3. Right to publish their works or to authorize other persons to publish their works.
4. Right to protect the integrity of their works, and to forbid other persons to modify, edit, or distort their works in whatever form, causing harm to the honor and reputation of the author.

The economic rights of authors are stipulated in Article 20, as follows:

1. To make derivative works.
2. To display their works to the public.
3. To reproduce their works.
4. To distribute or import the original or copies of their works.
5. To communicate their works to the public by wireless or landline means, electronic information networks, or other technical means.
6. To lease the original or copies of cinematographic works and computer programs.

Economic rights can be transferred to another party, while the artists' moral rights cannot.<sup>1</sup>

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#### [Section 39:49]

<sup>1</sup>Commercial Law, Articles 129–140.

#### [Section 39:50]

<sup>1</sup>Intellectual Property Law, Article 20.

**B. RELATIONSHIPS****§ 39:51 Relationship between dealer and artist**

The economic rights of artists and the relationship between dealers and artists is simply the relationship between buyers and sellers under the Commercial Law.<sup>1</sup> However, the moral rights of the artists will be governed by the Intellectual Property Law.<sup>2</sup>

**§ 39:52 Relationship between purchaser and dealer**

The relationship between an art purchaser and a dealer is governed by the Commercial Law, and transactions can be considered as a shift of property rights.<sup>1</sup> This will not affect the moral rights of the artist related to such artwork.<sup>2</sup>

**C. ART AUCTIONS****§ 39:53 Laws relating to auctions and auction houses**

The Commercial Law<sup>1</sup> defines auctions as follows: “Auction of goods means a commercial activity whereby the seller conducts, or hires an auctioneer to conduct, the public sale of goods in order to select the purchaser offering the highest price.”<sup>2</sup> In addition, Decree 17/2010/ND-CP also provides property auction as a means of public sale of property in which increasing bids are offered by two or more bidders.<sup>3</sup> The law requires auctioneers and sellers of goods to be business entities with a business registration for auctioneering services or a seller who conducts an auction of their own

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**[Section 39:51]**

<sup>1</sup>Commercial Law, Articles 129–140.

<sup>2</sup>Intellectual Property Law.

**[Section 39:52]**

<sup>1</sup>Commercial Law, Articles 129–140.

<sup>2</sup>Intellectual Property Law.

**[Section 39:53]**

<sup>1</sup>Commercial Law.

<sup>2</sup>Commercial Law, Article 185.

<sup>3</sup>Decree 17/2010/ND-CP of the Government on Property Auction dated March 4, 2010 (“Decree 17”).

goods. A “seller of goods” means the owner of goods or the person authorized by the owner of goods to sell the goods.<sup>4</sup>

#### D. “STOLEN” ART WORKS

##### § 39:54 Legal issues regarding “stolen” artworks

Under Vietnamese civil law, the purchase or sale of stolen property is an invalid transaction.<sup>1</sup> However, according to Article 138 of the Civil Code, if the property is “movable,” not subject to ownership registration, and has already been transferred to a bona fide third party through another transaction, the transaction with that bona fide third party will still be valid, except for the following situation: Owners may reclaim movable property not subject to ownership right registration from bona fide possessors in cases where such bona fide possessors have acquired such property through unindemnifiable contracts with persons who have no right to dispose of the property. In similar cases with indemnifiable contracts, the owners may reclaim the movable property if such movable property has been stolen, lost, or possessed against the owner’s will.<sup>2</sup>

Whether a bona fide purchaser of a stolen artwork must return the artwork to the person from whom the artwork was stolen or to that person’s heirs will be determined based on the facts of the case.

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<sup>4</sup>Commercial Law, Article 186.2. *See* Commercial Law, Section 2, Auction of Goods, Articles 185–213. Decree 17, Article 2.

##### [Section 39:54]

<sup>1</sup>Civil Code, Article 138.

<sup>2</sup>Civil Code, Article 257.